Gabongan Kesatuan Pekerja-Pekerja dalam Perkhidmatan-Perkhidmatan Kerani dan Bersekutu Kerajaan v Ketua Pengarah Perkhidmatan Awam & Anor

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R2-25-29 OF 1996
NIK HASHIM JC
20 JANUARY 1997

Civil Procedure *— Prerogative writs/orders — Mandamus — Application for — Failure of aggrieved party to make application for an order of certiorari to quash the decision of tribunal — Whether decision of tribunal can be ignored if party felt that decision was wrong without an appeal first being made to court to quash the decision*

Labour Law *— Trade dispute — Dispute over confirmation of public servants — Whether confirmation of public servant is a matter of management prerogative and not an 'anomaly' — Whether it is open to the respondents to argue that the matter is not in fact an anomaly if they did not at any time after the tribunal's decision and prior to the case dispute the same — Public Service Tribunal Act 1977*

The Amalgamated Union of Employees in Government Clerical and Allied Services ('the applicant'), on behalf of three of its affected members ('the affected members'), sought an order of mandamus directing the respondents to implement the decision of the Public Services Tribunal ('the tribunal') given on 26 October 1993. The applicant had earlier requested the first respondent to confirm the affected members (who had all exercised their option to abide by the new salary and service under the Cabinet Committee Report ('the CCR')) in their appointment pursuant to cl 3.43 of the CCR. The first respondent was not prepared to entertain the applicant's claim. As a consequence, the applicant being aggrieved by the first respondent's refusal, filed two memorandums dated 4 January 1989 and 2 June 1988 with the second respondent pursuant to the Public Service Tribunal Act 1977 ('the Act') stating that an anomaly had arisen as a result of the failure to implement cl 3.43 with regard to the affected members. The matter was ultimately heard by the tribunal and in its decision, the tribunal directed, inter alia, that the affected members be confirmed in their respective positions. The applicant requested the respondents to implement the tribunal's decision but the respondents refused to do so for over 1½ years. On 30 June 1995, the respondents informed the applicant that they would not be implementing the decision of the tribunal. Hence this application for an order of mandamus.

Before the learned judge, the respondents argued that the decision of the tribunal was null and void on the basis that the tribunal acted in excess of its jurisdiction in confirming the affected members as s 13(g) of the Act provides that confirmation of officers in the public services is the prerogative of the government. It was further argued

that since the respondents were of the opinion that the decision was wrong, the respondents were not bound by the decision and were not obliged to implement it.

Held, issuing the order of mandamus:

(1) Section 13(g) of the Act refers to the promotion of a public officer from a lower grade to a higher grade, and is not a provision governing confirmation of officers. The tribunal had heard and determined the anomaly as required to do so under s 4 of the Act and as such, it was not open to the respondents now to argue that the matter was not in fact an anomaly especially since they did not at any time after the tribunal's decision and prior to this case dispute the same. The decision of the tribunal was final, conclusive and binding on all the parties to the anomaly and its decision could not be challenged, appealed against, reviewed, quashed or called in question in any court (s 15(1)) although the tribunal, being an inferior tribunal, was still subject to judicial supervision (see p 218E–H).

(2) In this case, the respondents did not at any time make an application for an order of certiorari under O 53 of the Rules of the High Court 1980 to quash the decision of the tribunal. It would be contemptuous and an abuse of the law and the Act for the respondent to argue that they had not taken any steps to quash the tribunal's decision on the basis that the decision was invalid and they were therefore not bound to implement it. It is not open to any body or person to refuse to abide by a decision of a tribunal legally constituted simply because the person or body is of the view that the particular decision was wrong. Such opinion is irrelevant and of no consequence. The law had provided remedies in such an instance and unless the person or body avails himself to the remedies provided, the decision of the tribunal remains a valid and binding one (see pp 218I and 219A–C).

[Bahasa Malaysia summary

Gabungan Kesatuan Pekerja-Pekerja dalam Perkhidmatan-Perkhidmatan Kerani dan Bersekutu Kerajaan ('pemohon'), bagi pihak tiga ahli yang terjejas ('ahli-ahli yang terjejas'), memohon suatu perintah mandamus yang mengarahkan penentang-penentang supaya melaksanakan keputusan Tribunal Perkhidmatan Awam ('tribunal tersebut') yang diberikan pada 26 Oktober 1993. Pemohon terlebih dahulu telah meminta penentang pertama supaya mengesahkan ahli-ahli yang terjejas (yang kesemuanya telah melaksanakan opsyen mereka untuk mematuhi gaji dan pekhidmatan baru di bawah Laporan Jawatankuasa Kabinet ('LJK')) dalam pelantikan mereka menurut fasal 3.43 LJK. Penentang pertama tidak bersedia melayan tuntutan pemohon. Akibatnya, pemohon yang terkilan oleh penolakan penentang pertama, memfailkan dua memorandum bertarikh 4 Januari 1989 dan 2 Jun 1988 dengan

penentang kedua menurut Akta Tribunal Perkhidmatan Awam 1977 ('Akta tersebut') menyatakan bahawa suatu kejanggalan telah timbul akibat kegagalan untuk melaksanakan fasal 3.43 berkaitan dengan ahli-ahli yang terjejas. Perkara itu akhirnya didengar oleh tribunal tersebut dan dalam keputusannya, tribunal tersebut mengarahkan, antara lain, bahawa ahli-ahli yang terjejas disahkan dalam jawatan mereka masing-masing. Pemohon telah meminta penentang-penentang supaya melaksanakan keputusan tribunal tersebut tetapi penentang-penentang enggan berbuat demikian selama lebih 1½ tahun. Pada 30 Jun 1995, penentang-penentang memaklumkan kepada pemohon bahawa mereka tidak akan melaksanakan keputusan tribunal tersebut. Maka permohonan ini dibuat untuk suatu perintah mandamus.

Di hadapan hakim yang arif, penentang-penentang menghujahkan bahawa keputusan tribunal adalah tak sah dan batal kerana tribunal tersebut telah bertindak melampaui bidang kuasanya dalam mengesahkan ahli-ahli yang terjejas disebabkan s 13(g) Akta tersebut memperuntukkan bahawa pengesahan pegawai-pegawai dalam perkhidmatan awam adalah prerogatif kerajaan. Ia seterusnya dihujahkan bahawa oleh kerana penentang-penentang adalah berpandangan bahawa keputusan adalah salah, penentang-penentang tidak terikat oleh keputusan dan tidak wajib melaksanakannya.

Diputuskan, mengeluarkan perintah mandamus:

(1) Seksyen 13(g) Akta tersebut merujuk kepada kenaikan pangkat seorang pegawai awam daripada pangkat rendah kepada pangkat yang lebih tinggi, dan bukanlah peruntukan yang menguasai pengesahan pegawai-pegawai. Tribunal tersebut telah mendengar dan menentukan kejanggalan seperti yang dikehendaki berbuat demikian di bawah s 4 Akta tersebut dan oleh itu, ia tidak terbuka kepada penentang-penentang sekarang untuk menghujahkan bahawa perkara itu pada hakikatnya bukanlah suatu kejanggalan terutamanya memandangkan mereka tidak mempertikaikan yang sama pada bila-bila masa selepas keputusan tribunal tersebut dan sebelum kes ini. Keputusan tribunal tersebut adalah akhir, muktamad dan mengikat pada semua pihak kepada kejanggalan dan keputusannya tidak boleh dicabar, dirayu, dikaji semula, dibatalkan atau dipersoalkan di mana-mana mahkamah (s 15(1)) walaupun tribunal tersebut, yang merupakan tribunal bawahan, masih tertakluk kepada penyeliaan kehakiman (lihat ms 218E–H).

(2) Dalam kes ini, penentang-penentang pada bila-bila masa tidak membuat permohonan untuk suatu perintah certiorari di bawah A 53 Kaedah-Kaedah Mahkamah Tinggi 1980 bagi membatalkan keputusan tribunal tersebut. Adalah satu pengabaian dan suatu penyalahgunaan undang-undang dan Akta tersebut untuk penentang menghujahkan bahawa mereka tidak mengambil apa-apa langkah untuk membatalkan keputusan tribunal tersebut

atas dasar bahawa keputusan tersebut adalah tidak sah dan dengan itu mereka tidak terikat untuk melaksanakannya. Ia tidak terbuka kepada mana-mana perbadanan atau sesiapa untuk enggan mematuhi keputusan sebuah tribunal yang dibentuk secara sah hanya kerana orang atau perbadanan adalah berpendapat bahawa keputusan tertentu itu adalah salah. Pendapat demikian adalah tidak relevan dan tidak mempunyai akibat. Undang-undang telah memperuntukkan remedi dalam keadaan begitu dan melainkan orang atau perbadanan menggunakan remedi yang disediakan, keputusan tribunal tersebut kekal menjadi keputusan yang sah dan mengikat (lihat ms 218I dan 219A–C).]

Notes

For cases on application for mandamus, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2825–2829.

For cases on trade dispute, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 10442–1046.

Cases referred to

Anisminic Ltd v Foreign Compensation Commission [1969] 2 AC 147 (refd)

Kannan v Menteri Buruh dan Tenaga Rakyat [1974] 1 MLJ 90 (refd)

Selangor Omnibus Co Ltd v Transport Workers' Union [1967] 1 MLJ 280 (refd)

Legislation referred to

Public Services Tribunal Act 1977 ss 2(b), 4, 11(a), 11A(1), 13, 15

Public Service Tribunal Regulations 1978 Reg 12

Rules of the High Court 1980 O 53

Trade Unions Act 1959

KP Gengadharan and *A Selvamalar* (*Genga Maha Wong & Co*) for the applicant.

Zulkifli bin Bakar and *Hanipah bte Farikullah* (Senior Federal Counsel) for the respondent.

Cur Adv Vult

Nik Hashim JC: The applicant, the Amalgamated Union of Employees in Government Clerical and Allied Services (AUEGCAS) ('the Union'), is a trade union registered under the Trade Unions Act 1959. The Union on behalf of its affected members — En S Ramasubban, Puan Theresa Ng @ Wong and En N Kylasam, seek an order of mandamus directing the first and second respondents to implement (as provided for under s 15 of the Public Service Tribunal Act 1977) the decision of the Public Service Tribunal ('the tribunal') given on 26 October 1993 in respect of the Tribunal References Nos 12/92 and 15/92. At the outset of the hearing, En KP Gengadharan, for the Union after being notified by the court that

A a wrong letter was exhibited at 'U6' as supporting for the relief of the declaration, withdrew the second relief sought that is, 'A declaration that the ruling of the first respondent as servant or agent of the second respondent contained in a letter dated 30 June 1995 not to implement the decision of the Public Services Tribunal given on 26 October 1993 in respect of B Reference Nos 12/92 and 15/92 is null and void and of no effect'. Thus, the court proceeded to hear on the issue of mandamus only.

The grounds upon which the relief is sought are fully set out in the affidavit of the Union which reads as follows:

3 The following public servants were at all material times members of the C Union:

(1) Encik S Ramasubban;

(2) Puan Theresa Ng @ Wong; and

(3) Encik N Kylasam.

(The abovenamed are hereinafter collectively referred to as 'the D affected members').

4 Encik S Ramasubban was employed as a temporary stenographer on 15 December 1961. He was absorbed into the permanent scheme on probation on 1 April 1977. His confirmation was subject to him passing his departmental examination and the shorthand examination of 80wpm in Bahasa Malaysia. He was not confirmed in his appointment since he E failed to pass both the examination. His probation period was extended many times. However, he was terminated from service on 1 December 1991 when he was 54 years old.

5 Puan Theresa Ng @ Wong was employed as temporary stenographer on 29 January 1957 and was absorbed in the permanent scheme on F probation on 15 January 1977. Her confirmation was subject to her passing her departmental examination and the shorthand examination of 80wpm in Bahasa Malaysia. She was not confirmed in her appointment since she had failed in her attempts to pass the shorthand examination. Her probationary period was extended many times and finally her services were terminated on 14 January 1989.

G 6 Encik Kylasam joined the Audit Department as a general clerk on 1 February 1960 and was confirmed in his appointment. Later he was given a new appointment as an Audit Examiner on 26 February 1979. He was on probation for three years. His confirmation would be subject to his passing his departmental examination. He failed in his attempts to pass the said examination. He was not confirmed in his appointment H and he later retired from service on 12 March 1990. Since he had not passed his examination, he was reverted to his former position as general clerk and obtained his retirement benefits as a general clerk.

7 All the affected members abovenamed had exercised their option to abide by the new salary and condition of service under the Cabinet I Committee Report.

8 The applicant had made representation on behalf of its affected members to the first respondent that pursuant to cl 3.43 of the Cabinet Committee Report, the affected members should be confirmed in their appointment

although they had not passed the examination required for confirmation. The first respondent was not prepared to entertain the applicant's claim.

9 The applicant being aggrieved at the refusal of first respondent to entertain the applicant's request filed two memorandums dated 4 January 1989 and 2 June 1988 with the second respondent (under the provisions of the Public Service Tribunal Act 1977) regarding an anomaly that has arisen as a result of the non-implementation of the Terms and Conditions of Service offered under the Cabinet Committee Report in respect of its affected members and in particular to the failure of the first respondent to implement and give meaning to cl 3.43 of the Cabinet Committee Report in respect of the applicant's affected members who had not been confirmed in their appointment because they had not passed the examination during the period of probation. (Annexed are copies of the memorandums marked 'U1(A)' and 'U1(B)'.)

10 Since the anomaly raised by the applicant could not be resolved by negotiation between the applicant and the first respondent, a Certificate was issued as required under r 12 of the Public Service Tribunal Regulations 1978.

11 Since the anomaly could not be resolved, the matter was referred to the Public Service Tribunal under s 12 of the Public Service Tribunal Act 1977 ('the Act'). The applicant and the first respondent were notified that En Ramasubban and Puan Theresa Ng's matter was given Reference No 12/92 and En Kylasam's matter was given Reference No 15/92 and the matters were fixed for hearing on 12 January 1993 and 9 February 1993. (Copies of the notice of hearing are annexed and marked 'U2(A)' and 'U2(B)' respectively.)

12 The Public Service Tribunal after hearing the applicant and the first respondent in respect of Reference No 12/92 and Reference No 15/92 reserved its decision on the matters.

13 The Public Service Tribunal handed its decision on 26 October 1993 in respect of Reference No 12/92 and Reference No 15/92 as provided under s 14 of the Act and served a copy of its decision on the parties concerned. (A copy of the decision is annexed hereto and marked 'U3'.)

14 The applicant had requested the first and second respondents to implement the Public Service Tribunal's decision in Reference No 12/92 and 15/92 dated 26 October 1993 but the first and second respondents have delayed its implementation on grounds that the matter is being studied and by giving lame excuses. (Annexed are copies of the correspondences between the parties collectively marked 'U4'.)

15 Since more than 1½ years have lapsed since the decision was given and there was no response from the first respondent, the applicant made a final appeal to the first respondent on 18 May 1995. (A copy of the letter of appeal dated 18 May 1995 is annexed and marked 'U5'.)

16 On 30 June 1995, the first respondent as servant or agent of the second respondent gave a reply that it would not be implementing the decision in Reference Nos 12/92 and 15/92 on the grounds that the confirmation of officers in the public service is the prerogative of the second respondent as provided for under s 13 of the Act. (A copy of the letter dated 30 June 1995 is annexed and marked 'U6'.)

17 I am advised and verily believe that all the respondents' arguments including the provision of s 13 of the Act was canvassed and argued before the tribunal and the respondents cannot now refuse to comply with the decision of the tribunal. The respondents are deliberately refusing to comply with s 15(2) of the Act.

18 The particular grounds on which this application is filed is stated in the statement filed pursuant to O 53 r 1(2) of the Rules of the High Court 1980 and the applicant would rely on the same in support of this application.

19 In view of the respondents' failure to implement the decision of the Public Service Tribunal in Reference Nos 12/92 and 15/92, I on behalf of the applicant, therefore pray for an order in terms of this application.

The Tribunal, comprising Datuk Abdul Malek bin Abdul Aziz, as Chairman, Dato' Pang Leong Hoon and Datuk Zahari bin Abdul Rashid as Members, in its decision on 26 October 1993 at p 26, said:

31 Berbalik kepada tuntutan pemohon supaya pegawai-pegawai dalam kes No 12 Tahun 1992 dan No 15 Tahun 1992 disahkan dalam jawatan berdasarkan perakuan di perenggan 3.43 Laporan Jawatankuasa Kabinet, seperti huraian kami di perenggan 26, 27, 28 dan 29, kami berpendapat tindakan kerajaan menafikan pegawai-pegawai tersebut perakuan di perenggan 3.43 itu adalah bercanggah dengan prinsip-prinsip yang menjadi dasar perakuan-perakuan Jawatankuasa Kabinet dan dengan itu mengujudkan keadaan anomali di bawah s 2 Akta Tribunal Perkhidmatan Awam 1977. Justeru itu, kami *memutuskan* supaya En S Ramasubban dan Puan Theresa Ng @ Wong dalam Kes No 12 Tahun 1992 dan En N Kylasam dalam Kes No 15 Tahun 1992 disahkan dalam jawatan setelah menamatkan tempoh percubaan mereka iaitu En S Ramasubban pada 1 April 1980, Puan Theresa Ng @ Wong pada 15 Januari 1977 dan En N Kylaam pada 26 Disember 1977. Mereka tidak dibenarkan menerima kenaikan gaji yang melebihi sekatan percubaan memandangkan mereka telah tidak lulus dalam peperiksaan yang disyaratkan ke atas mereka.

32 Mengenai tuntutan kedua pemohon dalam Kes No 15 Tahun 1992 supaya En N Kylasam dianggap sebagai telah lulus semua peperiksaan, kami berpuashati bahawa tuntutan itu bukan berbangkit daripada apa-apa penyelewengan syor-syor Jawatankuasa Kabinet yang boleh menimbulkan keadaan anomali mengikut s 2 Akta Tribunal Perkhidmatan Awam 1977. Oleh itu, kami *memutuskan* tuntutan itu ditolak.

Encik Zulkifli bin Bakar, assisted by Puan Hanipah bte Farikullah, Senior Federal Counsel for the respondents argued that the decision of the tribunal is null and void on the ground that it has acted in excess of its jurisdiction in confirming the affected officers and said that confirmation of officers in the Public Service lies with the Public Services Commission and not with the tribunal, and since the respondents feel that the decision of the tribunal is wrong, they are not bound by the decision and therefore not obliged to implement it.

It is interesting to note that though the respondents had challenged the decision as being incorrect, they did not however, take any action to quash it. A

The Public Service Tribunal Act 1977 ('the Act') is an Act to establish a body to inquire into and resolve anomalies affecting the remunerations and terms and conditions of service in the public service. The Tribunal is an independent body. Section 2(b) of the Act defines 'anomaly' to mean: B

> ... any situation, affecting the remunerations or terms or conditions of service of any public officer or class or group of public officers and arising from the implementation of the recommendations of the Cabinet Committee, that constitutes a departure or deviation from the principles underlying the recommendations of the Cabinet Committee. C

In the instant case, the Union, being the aggrieved person whose members are affected by the alleged anomaly (s 11(1)(a)), submitted two memorandums (exh U1(A) and U1(B) to encl 1) to the second respondent (the government) regarding the anomaly that had arisen as a result of the first respondent's (JPA) failure to implement the terms and conditions of service offered under the Cabinet Committee Report in respect of its affected members who had not been confirmed in their appointments on failure to pass the probationary examinations. Clause 3.43 of the Cabinet Committee Report ('the CCR') states: D E

> As regards serving employees, the Ibrahim Commission has recommended (para 2.19 in Appendix 'B' of its Report) that they should be subjected to the period of probation it has recommended or as in their original terms of appointment, whichever is the shorter. Where such employees have not passed the probationary examinations stipulated in their existing schemes of service, they may be confirmed in their appointment on successful completion of the period of probation, but should not be permitted to progress on their revised clean wage scales, unless they have passed the examination concerned. We agree with the above recommendation but subject to the probationary period we have recommended in para 3.42 above. F

The Union argued that by cl 3.43 of the CCR, the affected members who had exercised their option to abide by the new salary and condition of service under the CCR, should be confirmed in their appointment although they had not passed the examination required for confirmation. The JPA is not agreeable to the Union's claim and says that the word 'may' in cl 3.43 of the CCR is not mandatory in its provision and the government is therefore not obliged to implement the CCR as there is no situation that constitutes a departure or deviation from the principles underlying the recommendations of the CCR in this case. G H

The Tribunal had this to say at para 29 of its decision:

> 29 Adalah jelas kepada kami bahawa pegawai-pegawai dalam kes No 12 Tahun 1992 dan No 15 Tahun 1992 tersebut adalah sedang berkhidmat dalam tempoh percubaan semasa Laporan Jawtankuasa Kabinet dilaksanakan dan mereka telah menandatangani opsyen untuk berpindah ke tangga gaji dan syarat-syarat perkhidmatan Laporan Jawatankuasa Kabinet. Oleh itu, kami berpendapat kedudukan pegawai-pegawai itu I

A iaitu En S Ramasubban dan Puan Theresa Ng @ Wong dalam kes No 12 Tahun 1992 dan En N Kylasam dalam kes No 15 Tahun 1992 yang tidak disahkan dalam jawatan selepas menamatkan tempoh percubaan mereka tidak seharusnya berlaku. Ini adalah kerana selaras dengan perakuan di perenggan 3.43 Laporan Jawatankuasa Kabinet, mereka sewajarnya menikmati faedah yang diperakukan itu. Kami
B berpendapat soal kerajaan tidak dapat melaksanakan perakuan di perenggan 3.43 itu tidak sepatutnya berlaku oleh kerana kerajaan telahpun bersetuju menerima dan melaksanakan Laporan Jawatankuasa Kabinet secara menyeluruh.

By that decision, the tribunal had disposed of the issue raised by
C the respondents.

On 30 June 1995, the JPA by letter replied that the government would not be implementing the decision of the tribunal on the grounds that the confirmation of officers in the public service is the prerogative of the government as provided for under s 13 of the Act which states:

D 13 The following matters are management prerogative and shall not be raised or made a subject matter of negotiation or reference to the tribunal under this Act by an aggrieved person —

(a) the creation of salary structure or salary scale;

(b) the creation or grading of posts;

E (c) regrading or amalgamation of posts;

(d) the creation or grading of schemes of service;

(e) amalgamation, classification or regrading of schemes of service;

(f) amendment or abolition of schemes of service;

(g) the promotion of a public officer from a lower grade to a higher
F grade;

(h) the transfer of a public officer;

(i) the appointment of any person into the public service;

(j) the determination of a starting salary of a public officer by the relevant appointing authority;

G (k) the termination of the service of a public officer by reasons of redundancy or reorganization; or termination in the service interest or public interest;

(l) the dismissal and reinstatement of a public officer;

(m) the assignment or allocation of duties in the public service;

H (n) the evaluation and recognition of qualifications;

(o) the assessment of the performance of a public officer; and

(p) matters relating to pensions.

It is the submission of the respondents that s 13(g) of the Act applies to this case as it involves 'menempatkan semula ke jawatan, seseorang pegawai
I awam'. The Tribunal considered the submission and ruled that the Union's claim was not a management prerogative but an anomaly which it had jurisdiction to resolve when it said at para 24 of the decision:

> Sebelum kami menimbangkan tuntutan pemohon, kami perlulah terlebih dahulu menentukan sama ada tuntutan pemohon, berkaitan dengan soal pengesahan dalam jawatan yang menurut kerajaan merupakan perkara di bawah prerogatif pengurusan, mempunyai hubungkait dengan soal anomali di bawah Akta Tribunal Perkhidmatan Awam 1977. Kami perhatikan tuntutan pemohon itu ialah mengenai pengesahan dalam jawatan yang diasaskannya secara khusus kepada perakuan di perenggan 3.43 Laporan Jawatankuasa Kabinet. Kami telah meneliti perenggan 3.43 itu dan kami perhatikan perakuan itu adalah mengenai perkara pengesahan dalam jawatan bagi pegawai-pegawai yang sedang berkhidmat. Kami berpendapat bahawa tuntutan pemohon itu adalah berkaitan dengan penetapan saraan atau had-had dan syarat-syarat perkhidmatan yang jika berlaku sebarang penyimpangan daripada prinsip-prinsip yang diperakukan oleh Jawatankuasa Kabinet akan mengujudkan suatu keadaan anomali mengikut s 2(b) Akta Tribunal Perkhidmatan Awam 1977. Dengan yang demikian, kami berpuashati bahawa tuntutan pemohon adalah merupakan suatu tuntutan anomali dan terletak di bawah bidang kuasa kami untuk menimbang dan memutuskannya.

Indeed, this anomaly was referred to the tribunal on a certificate signed by the Director General of the JPA under reg 12 of the Public Service Tribunal Regulations 1978, following the failure to resolve the anomaly by negotiation between the Union and the JPA. The JPA at that time did not treat the matter a management prerogative. Neither was a certificate signed by the Director General of the JPA issued under s 11A(1) of the Act claiming the subject matter of the dispute as a management prerogative. In my view, s 13(g) talks about the promotion of a public officer from a lower grade to a higher grade, and is not a provision governing confirmation of officers. The tribunal heard and determined the anomaly as required to do so under s 4 of the Act which reads:

> The functions of the tribunal shall be to determine any dispute in regard to any anomaly which is referred to it under the provisions of this Act.

As such, it is not open to the respondents now to argue that the matter is not in fact an anomaly especially since they did not at any time after the tribunal's decision and prior to this case dispute the same. The decision of the tribunal is final, conclusive and binding on all the parties to the anomaly and its decision cannot be challenged, appealed against, reviewed, quashed or called in question in any court: s 15(1). Notwithstanding the ouster clause, however, the High Court would invariably interfere with the decision if the decision is not according to law for example, when error of jurisdiction or error of law was committed by an inferior tribunal in its award (see *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147 (HL); *Selangor Omnibus Co Ltd v Transport Workers' Union* [1967] 1 MLJ 280; *Kannan v Menteri Buruh dan Tenaga Rakyat* [1974] 1 MLJ 90). The Public Service Tribunal is an inferior tribunal which is subject to judicial supervision.

But, in this case, the respondents did not at any time make an application for order of certiorari under O 53 of the Rules of the High Court 1980 to quash the decision of the tribunal. The ouster clause may not operate to preclude the remedy of certiorari provided the respondents had within six weeks of the decision taken steps to quash the decision. This

they failed to do. To say that the respondents are not bound by s 15 of the Act because the tribunal had acted without or in excess of jurisdiction would be to make a mockery of the law. It is not open to any body or person to refuse to abide by a decision of the tribunal legally constituted simply because that body or person is of the view that the decision is wrong. The opinion is irrelevant and of no consequence. The law must prevail. The law has provided for remedies in such an instance and until and unless the body or person concerned avails himself of the remedy, the decision remains a valid and binding one. For the respondents to state that they had not taken any steps to quash the tribunal's decision because the decision was invalid and therefore they were not bound to implement it, in my view, is contemptuous and indeed an abuse of the law and the Act. The Tribunal is created with the duty to ensure that any anomalies which arise from the implementation of the recommendations of the CCR are resolved. Parliament in its wisdom passed the Act, which binds the respondents (s 15(1)). The respondents must respect and adhere to the decision of the tribunal.

Section 15(2) of the Act imposes a statutory duty on the respondents to implement the decision of the tribunal as soon as practicable, but not later than six months from the date of the decision being given. The respondents' failure to implement the tribunal's decision amounts to a blatant disregard of the very law which has been legislated to resolve anomalies within the public service. The respondents have misconceived the law and the role of the tribunal.

In the result, and for the reasons above stated, I order that mandamus be issued to direct the respondents to implement the decision of the tribunal at p 26 of its decision with costs.

Order accordingly.

Reported by Lew Chee Seong